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December 14, 2016

VIA HAND DELIVERY

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Complaints Examination & Legal Administration  
Federal Election Commission  
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OFFICE OF GENERAL

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COMMISSION

Re: MUR 7154

Dear Mr. Jordan:

On behalf of Hillary for America, and Jose H. Villarreal in his official capacity as Treasurer ("Respondents"), we submit this letter in response to the complaint filed by Kathleen M. Egan on October 20, 2016 (the "Complaint"), alleging a violation of the Federal Election Campaign Act of 1971, as amended ("the Act"), or Federal Election Commission ("FEC or "Commission") regulations.

The Complaint incorrectly concludes that, in distributing a piece of mail with an image of Hillary Clinton above the caption "[j]oin us in *endorsing your state and local Democratic candidates*," the Ohio Democratic Party made a "coordinated communication" with Respondents. Compl. at 1. The communication clearly falls within the safe harbor exemption for endorsements set forth at 11 C.F.R. § 109.21(g)(1). Moreover, the allegation that the mailer violated the Commission's disclaimer regulations are inapposite with respect to Respondents, which did not sponsor the communication and are not responsible for its compliance with federal disclaimer requirements.

BACKGROUND

The Complaint lists a series of alleged violations committed by the Ohio Democratic Party regarding a "broadly mailed...printed brochure...listing a number of federal, state and local democratic candidates for office in Ohio" (the "ODP Mailer"). Compl. at 1. The Complaint goes on to explain that a number of federal candidates, including Hillary Clinton, were named and pictured on the ODP Mailer above the caption "[j]oin us in endorsing your state and local Democratic candidates." Compl. at 1. According to the Complaint, the ODP Mailer failed to include disclaimers required by Commission regulations. Citing no additional facts, the Complaint concludes that the ODP Mailer "appears on its face to be a coordinated

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communication between the ODP and each candidate" and that "expenses for the mailing appear to be a contribution from the ODP to each candidate." Compl. at 3.

### LEGAL ANALYSIS

A complaint must "contain a clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction."<sup>1</sup> Here, however, the Complaint fails to describe any violations of law with respect to Respondents.

#### *A. Alleged Disclaimer Violations Inapposite With Respect to Respondents*

The Act and Commission regulations require political committees that make public communications to include certain disclaimers, depending on the type of communication at issue. Those requirements, however, apply only to the political committee that pays for the communication.<sup>2</sup> Respondents did not produce or distribute the ODP Mailer, nor did they authorize the communication.<sup>3</sup> Accordingly, any allegation that the Ohio Democratic Party failed to include necessary disclaimers on its communications is inapposite with respect to Respondents. Therefore, with respect to the various claims regarding insufficient disclaimers, the Complaint contains no actual allegation that Respondents violated any law, or specifically, any provision of the Act or Commission regulations.

#### *B. Safe Harbor for Endorsing Federal Candidates Applies to ODP Mailer, Respondents*

As a general rule, a public communication must satisfy a three-prong test to be considered a coordinated communication: it must (1) be paid for by a person other than a candidate, authorized committee or political party committee with which it is coordinated; (2) satisfy one or more content standards; and (3) satisfy one of several conduct standards.<sup>4</sup>

However, Commission regulations provide that a public communications in which a Federal candidate endorses a candidate for non-Federal office is not a "coordinated communication," so long as the public communication does not "promote[], support[], attack[], or oppose[] the endorsing candidate or another candidate who seeks election to the same office as the endorsing candidate."<sup>5</sup> Public communications that fall under this safe harbor exception are *not* considered coordinated communications with respect to the endorsing Federal candidate.<sup>6</sup> In interpreting this

<sup>1</sup> 11 C.F.R. § 111.4(d)(3).

<sup>2</sup> 11 C.F.R. § 110.11(a)(1) ("all public communications...made by a political committee" must include certain disclaimers as required by the Commission).

<sup>3</sup> 11 C.F.R. § 110.11(b)(2).

<sup>4</sup> 11 C.F.R. § 109.21(a). While the Commission need not reach this question to dispose of the complaint, we note that the Complaint does not allege facts showing that the mailer satisfied the conduct prong.

<sup>5</sup> *Id.* § 109.21(g)(1).

<sup>6</sup> *Id.*

safe harbor provision, the Commission has confirmed that a communication that is "limited to expressing his support for the State candidates, and...not promote or support [the Federal candidate] or attack or oppose his opponents...would fall within the safe harbor for endorsements by Federal candidates."<sup>7</sup>

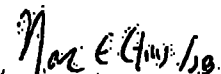
The Commission should reach the same conclusion here. As described above, the ODP Mailer includes an image of Hillary Clinton above a caption inviting readers to "join us in *endorsing your state and local* Democratic candidates." Compl. at 1 (emphasis added); *see also* Compl. Ex. A. The piece then includes images of the clearly identified state and local candidates that Hillary Clinton is endorsing. The mailer therefore constitutes an endorsement of state and local candidates. Nothing in the ODP Mailer promotes, supports, attacks, or opposes Hillary Clinton, nor does it promote, support, attack, or oppose any of Hillary Clinton's opponents. Accordingly, the ODP Mailer falls within the safe harbor provision in 11 C.F.R. § 109.21(g)(1), and does not constitute a coordinated communication with respect to Respondents.<sup>8</sup>

### CONCLUSION

The Commission may find "reason to believe" only if a Complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the Act.<sup>9</sup> The Complaint fails to meet this standard with respect to Respondents. Accordingly, we request the Commission find no reason to believe Respondents committed any violation of the Act and dismiss this matter immediately.

We appreciate the Commission's consideration of this response.

Sincerely,



Marc E. Elias

Jonathan Berkon

Courtney Weisman

Counsel to Hillary for America and Jose H. Villarreal

<sup>7</sup> FEC Adv. Op. 2007-21 (Holt) (finding that Representative Holt may serve as the honorary chairman of the 2007 general election campaigns of three publicly funded State candidates, because his proposed activities would not violate the Act, including in part, because the public communications at issue would fall within the safe harbor in 11 C.F.R. § 109.21(g)(1)).

<sup>8</sup> 11 C.F.R. § 109.21(g)(1).

<sup>9</sup> *Id.* § 109.21(a).

*Kathryn Ross*

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Kathryn Ross  
Date: 2018.01.10  
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Federal Election Commission  
Office of Complaints Examination and Legal Administration  
Attn: Mary Beth deBeau, Paralegal  
999 E Street, NW  
Washington, DC 20463

**RE: MUR 7154**  
Wharton for Congress

Ms. Gallagher,

On January 5, 2017, I received your notification to Wharton for Congress regarding the Complaint filed October 20, 2016, this was the first letter Wharton for Congress has received pertaining to this matter. Wharton for Congress never received the initial Complaint.

In Response to FEC matter MUR 7154, Wharton for Congress, a now defunct political campaign, holds that no further action should be taken against me or the former campaign. All exhibits included in the complaint were issued by the Ohio Democratic Party (ODP) with no prior consent, authorization or communication with Wharton for Congress. Pursuant to 11 C.F.R. 110.11 (b)(2) and (3) there was no authorization, coordinated campaign or coordinated communications put forth to the public on our behalf.

It is our position that the "brochure" issued by ODP was in fact a slate card that included all major federal, state, and local candidates as well as issues specific to Franklin County. Wharton for Congress had no knowledge of the "brochure" prior to or after mailing, in fact, as the campaign headquarters is not in Franklin County we at Wharton for Congress had not seen this "brochure" prior to your letter, therefore there are no documents or records in our possession relating to this matter. The "brochure" appears to be specifically targeted to Franklin County, of which only roughly about one third is in the 15<sup>th</sup> district.

It is our position, in writing, that no further action should be taken against Wharton for Congress or me in this matter. As, in accordance with FEC rules, Wharton for Congress has filed its termination report and is now a closed campaign we will consider this matter closed as well.

Sincerely,

George R. Wharton  
Treasurer